



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 18, 2003

Mr. Wayne D. Haglund  
Law Office of Wayne D. Haglund, P.C.  
P. O. Box 713  
Lufkin, Texas 75902-0713

OR2003-9164

Dear Mr. Haglund:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193149.

The Coldspring-Oakhurst Consolidated Independent School District (the "district"), which you represent, received a request for seven categories of information related to two named district employees. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. We note that the submitted information includes I-9 forms. Section 1324a of title 8 of the United States Code provides that a Form I-9, the Employment Eligibility Verification Form, "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The release of the submitted I-9 forms in response to this request for information would be "for purposes other than for enforcement" of the referenced federal statutes. An I-9 form may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system. Therefore, the district must withhold the submitted I-9 forms under section 552.101 of the Government Code in conjunction with federal law.

Section 21.355 of the Education Code provides, "A document evaluating the performance of a teacher or administrator is confidential." This office interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office determined that an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is serving as an administrator at the time of the evaluation. *Id.* Similarly, a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *See id.* Based on your representations and the reasoning set out in Open Records Decision No. 643, we determine that most of the evaluation documents you have submitted are confidential under section 21.355 of the Education Code. We have marked some documents for which you claim section 21.355, but which do not constitute documents evaluating the performance of a teacher or administrator. These documents may not be withheld under section 552.101 in conjunction with section 21.355. The district must withhold the remaining evaluations you have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.102 of the Government Code also protects from disclosure most information on a transcript from an institution of higher education maintained in the personnel files of professional public school employees. Gov't Code § 552.102(b). Section 552.102(b) excepts from disclosure all information from transcripts other than the employee's name, the courses taken, and the degree obtained. Open Records Decision No. 526 (1989). Accordingly, with the exception of the employees' names, courses taken, and degrees obtained, we determine that the district must withhold the submitted transcripts, which you have marked, under section 552.102(b) of the Government Code.<sup>1</sup> We note that you have marked additional information under section 552.102(b). This information, which we have marked for release, does not constitute a transcript from an institution of higher education, and therefore may not be withheld under section 552.102(b).

Next, the submitted documents contain information that may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024 of the Government Code. Whether information is protected by section 552.117 must be determined at the time the request for information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.

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<sup>1</sup>Because we make this determination with respect to the submitted transcripts, we do not address your arguments under section 552.117 for information contained on these transcripts.

Consequently, if the individuals at issue timely elected to keep their social security numbers, home addresses, home telephone numbers, and family member information confidential, the district must withhold this information under section 552.117 of the Government Code. If the individuals at issue did not timely elect to keep this information confidential, the district may not withhold the information under section 552.117 of the Government Code.

We note that some of the information that you have marked under section 552.117, such as personal post office box numbers, is not encompassed by section 552.117 and, thus, must be released to the requestor. *See generally* Gov't Code § 552.117; *see also* Open Records Decision No. 622 at 4 (1994) ("The legislative history of section 552.117(1)(A) makes clear that its purpose is to protect public employees from being harassed at home. *See* House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)." (Emphasis added)). We have marked the information which the district seeks to withhold under section 552.117, but which may not be withheld on that basis. Further, we have marked some additional information which must also be withheld if section 552.117 applies.

We note that if the individuals at issue did not timely elect to keep their social security numbers confidential pursuant to section 552.024, these numbers may be confidential under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers in the submitted documents are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act (the "Act") imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, the district should ensure that the social security number was not obtained and is not maintained by the school district pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, the submitted documents contain Texas driver's license information. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

The district must withhold the Texas driver's license information you have marked, as well as the additional Texas driver's license information we have marked, under section 552.130 of the Government Code.

To summarize, we conclude: (1) the district must withhold the submitted I-9 forms under section 552.101 of the Government Code in conjunction with federal law; (2) the district must withhold the submitted evaluations under section 552.101 in conjunction with section 21.355 of the Education Code, except for the documents we have marked for which you claim section 21.355, but which do not constitute documents evaluating the performance of a teacher or administrator; (3) with the exception of the employees' names, courses taken, and degrees obtained, the district must withhold the submitted transcripts, which you have marked, under section 552.102(b) of the Government Code; we have marked some information for which you claim section 552.102(b) but which may not be withheld on that basis; (4) the district must withhold most of the information you have marked, as well as the additional information we have marked, under section 552.117 of the Government Code; we have also marked some information you seek to withhold under section 552.117 but which may not be withheld on that basis; (5) regardless of the applicability of section 552.117, social security numbers may be confidential under federal law; and (6) the district must withhold the information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 193149

Enc. Submitted documents

c: Mr. Allen Graham  
P. O. Box 1754  
Onalaska, Texas 77360  
(w/o enclosures)